

EXHIBIT O

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
TOPEKA, KANSAS

ORIGINAL

In Re: WESTAR ENERGY, INC. Case No.
ERISA LITIGATION 03-4032-JAR

TRANSCRIPT OF FAIRNESS HEARING

PROCEEDINGS had before the Honorable
Julie A. Robinson, United States District
Court Judge, for the District of Kansas,
Topeka, Kansas, on the 27th day of July,
2006.

APPEARANCES:

For the Joseph H. Meltzer, Esq.
Plaintiffs: SCHIFFRIN & BARROWAY, LLP
280 King of Prussia Road
Radnor, PA 19087

Ronald P. Pope, Esq.
Ralston, Pope & Diehl, LLC
2913 S.W. Maupin Lane
Topeka, KS 66614

For Defendant Sharon Katz, Esq.
Westar Energy: Antoinette Ellison, Esq.
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, NY 10017

Jason M. Hans, Esq.
ROUSE HENDRICKS
GERMAN MAY PC
One Petticoat Lane Building
1010 Walnut Street
Suite 400
Kansas City, MO 64106

For Defendant Stanley M. Burgess, Esq.
Koupal: ARMSTRONG TEASDALE LLP - KC
2345 Grand Boulevard
Suite 2000
Kansas City, MO 64108-2617

SHERRY A. BERNER
Official Court Reporter

1
2 For Defendant Kathryn A. Lewis, Esq.
Terrill: WARDEN TRIPLETT GRIER PA
3 9401 Indian Creek Parkway
Suite 1100
4 Overland Park, KS 66210
5 Court Reporter: Sherry A. Berner, C.S.R.
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PROCEEDINGS

THE COURT: All right. We will call
In Re: Westar Energy, Inc. ERISA Litigation,
case number 03-4032. Your appearances.

We'll begin with you, Ms. Lewis,
you're on the phone.

MS. LEWIS: Yes. It's Kathryn Lewis
for Defendant Richard Terrill.

THE COURT: All right. And other
appearances, please.

MR. MELTZER: Good afternoon, Your
Honor. Joseph Meltzer of Schiffrin &
Barroway on behalf of the plaintiffs. Joined
with me is cocounsel, Ron Pope.

MS. KATZ: And Sharon Katz of Davis
Polk & Wardwell, and my colleague, Antoinette
Ellison, from Davis Polk & Wardwell, for
Westar Energy. And Mr. Hans on--

MR. HANS: Jason Hans on behalf of
Westar Energy.

THE COURT: All right.

MR. BURGESS: I'm Matthew Burgess
from Armstrong Teasdale on behalf of Carl
Koupal.

THE COURT: All right. And we're

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1 here for the fairness hearing on the
2 settlement of the class action in this case.

3 On May 15th of this year I held a
4 preliminary settlement hearing and
5 preliminarily approved the settlement,
6 ordered that notice be given, as set forth in
7 the order preliminarily approving settlement.
8 And in preliminarily approving the settlement
9 I conditionally certified the class,
10 preliminarily approved the terms of the
11 settlement, and set this date for today's
12 hearing, and, of course, approved the class
13 notice of proposed settlement.

14 You all have now submitted a
15 proposed order and final judgment. And in
16 addition we've received the motion of the
17 plaintiffs for final approval; a memorandum
18 in support of class counsel's motion for
19 award of attorneys' fees, expenses, and case
20 contribution compensation as well; a
21 declaration of Mr. Meltzer in support of the
22 motions for settlement and awarded fees,
23 compensation, and reimbursement of expenses;
24 a declaration of Mr. Pope concerning that as
25 well.

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1 All right. Mr. Meltzer or Ms. Katz,
2 who is going to proceed?

3 MR. MELTZER: I will, Your Honor.

4 THE COURT: All right, go ahead.

5 MR. MELTZER: Thank you. Your
6 Honor, we are pleased to be here today. And
7 as you stated, we're here to present a
8 settlement of all claims in the Westar ERISA
9 litigation. As Your Honor has alluded to, a
10 lot of papers have been filed in our
11 presentation so I won't cover everything in
12 those papers or it would drag on far too
13 long; but I think I'll hit the relevant
14 points.

15 As I stated, we have a settlement of
16 all claims in the Westar ERISA case. It
17 was-- the settlement was the product of some
18 rather strenuous and extensive negotiations
19 between the parties. We're proud to present
20 the settlement. We think in light of the
21 litigation risk and the damage analogies in
22 this case that it's an excellent result for
23 the ERISA class.

24 The settlement calls for a payment
25 of 9.25 million that will be paid by the

1 defendants into the Westar Energy 401(k)
2 savings plan. That money will then be
3 distributed to class members and plan
4 participants in accordance with the plan of
5 obligation that we've submitted in
6 conjunction with the settlement.

7 Two points I would want to make
8 quickly. First, the settlement has been
9 reviewed by an independent fiduciary. The
10 independent fiduciary was retained by Westar
11 in its corporate capacity and as a fiduciary
12 of the plan. The independent fiduciary in
13 this case is Independent Fiduciary Services,
14 Incorporated. Essentially what they do is
15 they come in to look and see that the
16 settlement meets the DOL class exemption, and
17 also that it's not a prohibited transaction
18 under Section 406 of ERISA. Essentially,
19 they need to make a determination that the
20 release given in consideration for the value
21 of the settlement is fair and that the
22 fiduciaries were not engaged in self-dealing.

23 They have authorized the settlement.
24 Your Honor has, obviously, the ultimate
25 discretion to approve. But in a case such as

1 this it's usually a good sign when the
2 independent fiduciary gives its blessing to
3 the settlement.

4 The other point I would make is that
5 there have been no objections to either the
6 motion for approval or for the application of
7 fees. That's especially telling in this case
8 because we have a -- as Mr. Pope would tell
9 you -- a very active, interested class. They
10 were very involved, very engaged in this
11 entire process. And they have unanimously
12 endorsed the settlement, and no one has
13 lodged any objections to any of the motions
14 pending today.

15 The two motions that are on calendar
16 for today, as Your Honor stated, are a motion
17 for final approval of settlement,
18 certification of the settlement class and
19 approval of the plan of allocation; and a
20 second motion for an award of attorneys'
21 fees, reimbursement of expenses and case
22 contribution compensation. And, Your Honor,
23 with your permission, I can address the
24 settlement first.

25 THE COURT: Go ahead.

1 MR. MELTZER: The-- Your Honor,
2 would it be helpful if I gave a background of
3 the claims and the history of the litigation?
4 That's set forth at length in the papers, but
5 I would be happy to do it for the record.

6 THE COURT: No. I think you can
7 summarize that.

8 MR. MELTZER: Okay. Your Honor,
9 just briefly, the first case in the Westar
10 ERISA litigation was filed in March of 2003.
11 The central claim is that the plan
12 fiduciaries breached their duties under ERISA
13 by allowing investments in the company stock
14 at a time when they knew or should have known
15 that those investments were imprudent.

16 There were many cases that were
17 filed after the Toledo case, the first case
18 filed in March. There were several cases
19 filed afterwards.

20 Your Honor consolidated those cases
21 in September of 2003. We filed a
22 consolidated pleading -- which is the
23 operative complaint for today -- in October
24 of 2003, and that touched off a flurry of
25 briefings, several motions to dismiss,

1 consolidated response, numerous replies.

2 Your Honor, we started informal
3 settlement negotiations in the summer of
4 2004. We continued those through the fall to
5 essentially pick a mediator. Our first
6 mediation -- there wound up being four total
7 -- was in December of 2004 with Gary McGowan,
8 who presided over each and every mediation in
9 this case.

10 Unable to resolve the case, we went
11 back into litigation posture in 2005. We
12 essentially engaged in a formal
13 discovery protocol at that point that was
14 presided over by Magistrate Judge O'Hara.
15 The defendants produced a large volume of
16 documents. We prepared, we analyzed, and
17 coded some of those documents. We set up an
18 electronic database for further analysis.

19 We also continued on a settlement
20 track, fortunately, as we were going through
21 formal discovery. We had another mediation
22 -- excuse me -- in the spring of 2005 that
23 was, obviously, unsuccessful. We pressed
24 forward with a lot of discovery in the case.

25 We had yet another mediation in

1 October of 2005. And while we weren't able
2 to resolve the case at that time, it did
3 break some of the log jam, frankly. There
4 was a fair amount of progress in October of
5 2005. That may partly be the result of Your
6 Honor's ruling in September of 2005 on the
7 motions to dismiss. Gave people a better
8 sense of what the claims were going to be in
9 this litigation.

10 We scheduled a final mediation for
11 January 31st of this year. We were able to
12 reach an agreement at that time. We signed
13 the term sheet on that day and began the
14 settlement process which leads us to today's
15 hearing.

16 In terms of the approval process,
17 the Tenth Circuit has established a
18 four-factor test to determine whether the
19 settlement is fair, reasonable, and adequate.
20 The test is set forth in the Tenth Circuit
21 case Jones v. Nuclear Pharmacy.

22 I'll go through them briefly. The
23 first factor is whether the proposed
24 settlement was fairly and honestly
25 negotiated. Your Honor, as I just explained,

1 there were multiple mediations. There were
2 formal negotiations with an experienced
3 mediator. There were informal negotiations.
4 The negotiation process in this case was
5 arms-length, to say the least, and was
6 strenuous and was fair and honest.

7 The second factor is whether serious
8 questions of law and facts exist, placing the
9 ultimate outcome of the litigation in doubt.
10 Your Honor, as a lot of courts have noted,
11 these are difficult cases. ERISA itself is a
12 very difficult statute. There are complex
13 questions. And when you factor in the class
14 certification aspects of this case, you find
15 a way to make an ERISA case even more
16 complicated. So I think that factor also
17 militates in favor of approval.

18 The third factor is whether the
19 value of an immediate recovery outweighs the
20 mere possibility of future relief after
21 protracted and expensive litigation. Your
22 Honor, in this particular case, given what
23 our prospects were for success, even if we
24 overcame every legal hurdle by very capable
25 opposing counsel, I'm not sure that we would

1 have done any better; and we may have wound
2 up getting a little bit less for the class
3 settlement. This factor is particularly in
4 favor of approval here because we were able
5 to get a recovery which may well exceed what
6 we would have gotten even if we would have
7 won through judgment.

8 The fourth factor is the judgement
9 of the parties that the settlement is fair
10 and reasonable. I think everyone here today
11 will essentially endorse the settlement as
12 fair and reasonable. I know I do. I'm
13 fairly confident that my colleagues on the
14 defense side will as well. And I think those
15 four factors are what the Tenth Circuit views
16 in terms of assessing whether a settlement
17 should be approved. I think they're all met
18 here.

19 The only other point that I would
20 make with respect to the settlement, Your
21 Honor, again, is that there have been no
22 objections. So the reaction of the class has
23 been overwhelmingly and unanimously, frankly,
24 in support of approval.

25 The other aspect of the settlement

1 approval is for certification of the
2 settlement class. We think that Your Honor
3 mentioned that you preliminarily certified
4 the settlement class. We think that the
5 class certification in this case is very
6 appropriate. A 23(b)(1) class should be
7 certified. The class that we're seeking to
8 certify for settlement purposes is a
9 participant or beneficiary in the Westar
10 Energy employees' 401(k) savings plan from
11 July 1st, '98, through January 1st, 2003,
12 whose account included investments in Westar
13 stock.

14 Your Honor, as our papers explain in
15 some length, I think all the factors of 23(a)
16 are met, as well as the factors of 23(b)(1)
17 have also been satisfied. There have been a
18 number of these cases both in a settlement
19 context and in a litigation context, this
20 ERISA employer stock type of case. I believe
21 they have all been certified under 23(b)(1)
22 as a non opt-out class. And we think that's
23 appropriate here.

24 Your Honor, I don't-- I don't have
25 anything more on the settlement itself unless

1 Your Honor has any questions.

2 THE COURT: I don't believe so.

3 Would anyone else like to weigh in
4 on this matter?

5 MS. KATZ: If I might just for a
6 second, Your Honor, just to say on behalf of
7 Westar that we are very pleased to be here at
8 what we hope is now the conclusion of the
9 trilogy of civil cases that had originally
10 been presented to Your Honor, and we are very
11 pleased with the settlement. We do believe
12 that it is fair, reasonable, and adequate.

13 The settlement negotiations were
14 very, very hard-fought. This was a very,
15 very difficult case for us to resolve. But
16 we are very pleased with the results, and we
17 think that they will be of great benefit to
18 the members of the class, and we just urge
19 that Your Honor approve the settlement as
20 described by Mr. Meltzer and the
21 certification of the class. Thank you.

22 THE COURT: All right. Thank you.

23 Anyone else?

24 All right. I'll begin with the
25 matter of the certification of the class.

1 And, yes, there have been no objections by
2 any single class member to the certification
3 of the class, to the settlement, or to the
4 related matters concerning allowance of fees
5 and expenses and compensation. I did
6 conditionally certify the class at the
7 preliminary hearing. I'll now reiterate my
8 findings that class certification is proper
9 for the class, as defined in the preliminary
10 order.

11 The requirements of Rule 23(a) are
12 met. The numerosity requirement is met.
13 This class consists of several thousand
14 potential class members. Joinder is not
15 practicable.

16 The requirement of commonality is
17 met. There are common issues of fact and
18 law, including whether the defendants
19 breached fiduciary duties owed to the plan
20 and their participants in allowing the
21 maintenance of existing, and the addition of
22 new, investments in the company stock during
23 the proposed class period; issues concerning
24 whether the defendants knew or should have
25 known of problems besieging the company that

1 negatively affected the prudence of Westar
2 stock as an investment of the plan during the
3 class period.

4 Other common issues: Whether
5 defendants were fiduciaries of the plan
6 and/or the participants; whether defendants
7 breached their fiduciary duties, if they were
8 fiduciaries; whether the plans and the
9 participants were injured by such breaches;
10 and whether the class is entitled to damages
11 and injunctive relief.

12 The requirement of typicality is met
13 in that the claims of the class
14 representatives are typical of the claims of
15 the class as a whole. The plaintiffs in this
16 case and the proposed class are all employees
17 of Westar, a participant of the plan during
18 the class period, and each had part of his or
19 her individual plan investment portfolio
20 invested in Westar stock during the class
21 period.

22 All of them-- all of the plaintiffs
23 sustained injury during the class period; and
24 all of the plaintiffs bring their claims
25 pursuant to ERISA Sections 409 and 502(a)(2);

17

1 for plan-wide relief, so any relief obtained
2 would inure to the plan as a whole and,
3 derivatively, to its participants during the
4 class period.

5 And the requirement for adequacy of
6 representation is also met. The named
7 plaintiffs and their counsel are adequate
8 representatives of the interests of the class
9 as a whole. I find that plaintiffs have no
10 interest antagonistic to the interests of the
11 absent class members.

12 Plaintiffs have retained attorneys
13 that are highly qualified and experienced in
14 this type of litigation, ERISA breach of
15 fiduciary class actions, specifically. And
16 based on all of the pleadings in the entire
17 record, I find that they have diligently
18 represented the class before the Court as
19 well as in negotiations with defendants'
20 counsel that resulted in this settlement. So
21 all of the requirements of 23(a) are met.

22 Also, the requirements of 23(b)(1)
23 are met in that the only remedy available to
24 the plan participants is in fact plan-wide
25 relief, including the restoration of losses

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1 to the plan. Actions such as this are by law
2 representative actions which, if successful,
3 will cause defendants to be obligated to
4 provide relief applicable to all participants
5 in the plan.

6 And given the unique group based
7 relief offered under ERISA for violations of
8 the fiduciary duties owed to participants in
9 covered benefit plans, these actions are
10 appropriate for class treatment under
11 Rule 23(b)(1) to avoid the risk of
12 inconsistent outcomes and inconsistent
13 standards of conduct for defendants; as well
14 as, the prosecution of separate individual
15 actions would, as a practical matter, be
16 dispositive of the interests of other class
17 members who were not parties to the action.

18 Thus, I will certify the proposed
19 class pursuant to Rule 23 for settlement
20 purposes. The class being defined as set out
21 in the pleadings. In short: Any person who
22 was a participant in or beneficiary of the
23 Westar 401(k) employees' savings plan from
24 July 1, 1998, through January 1, 2003, and
25 whose account in the plan included

1 investments in the Westar Energy, Inc.
2 company stock fund.

3 Excluded from the settlement class
4 are all defendants named in the action, their
5 subsidiaries and affiliates, members of their
6 immediate family, the legal representatives,
7 heirs, successors or assigns of any excluded
8 person, as well as any entity in which the
9 company has or has had a controlling
10 interest.

11 All right. And then turning to the
12 proposed settlement itself, first of all,
13 I'll find that notice to prospective class
14 members was adequate. I approved the
15 proposed class notice of proposed settlement
16 at the last hearing.

17 The administrator filed an affidavit
18 on July 17, 2006, establishing that notice
19 was mailed to the class, as ordered, and it
20 was also published in accordance with the
21 terms of the preliminary order. Notice was
22 sent to 3,871 current and former participants,
23 of the plan on May 26, 2006, and the approved
24 publication notice was published nationally
25 in *USA Today* and locally in *The Kansas City*

1 *Star, The Wichita Eagle, and The Topeka*
2 *Capital-Journal*. Also, plaintiffs created a
3 dedicated settlement website, which is
4 identified in the pleadings.

5 The form and method of notice was
6 agreed to by the parties; it was approved by
7 the Court; it was effectuated by the
8 plaintiffs, consistent with the order; and it
9 satisfies all due process considerations and
10 meets the requirements of 23(e)(1)(B).

11 All right. Turning to final
12 approval of the settlement, as Mr. Meltzer
13 has indicated, under the Tenth Circuit
14 prevailing case law there are four factors
15 the Court must address and consider when
16 determining whether the proposed settlement
17 is fair, reasonable, and adequate.

18 The first such factor is that the
19 settlement was fairly and honestly
20 negotiated. As the pleadings set out in
21 detail, and as Mr. Meltzer summarized, this
22 settlement is the product of lengthy
23 litigation as well as mediation and
24 negotiation: 18 months or more of formal and
25 informal negotiations; multiple mediation

1 sessions with an experienced mediator, who
2 was also the mediator in the Westar
3 securities litigation; voluminous discovery;
4 as well as intense advocacy and litigation
5 through this stage of motions to dismiss and
6 responses to that.

7 In addition, the Court finds that
8 class counsel had an in-depth understanding
9 of the merits of plaintiffs' claims and the
10 defenses available to defendants. Plaintiffs
11 counsel had the same. The Court-- in
12 addition, of course, there was this oversight
13 or independent evaluation by a third party
14 experienced in this type of litigation. So
15 based on all of these things, the Court
16 concludes that the settlement was fairly and
17 honestly negotiated.

18 The second factor is that there be
19 existence of serious questions of law and
20 fact. This is obviously evident to the Court
21 based on having reviewed and considered and
22 ruling on a number of issues that arose in
23 the context of the motions to dismiss.

24 In addition, more generally, as
25 plaintiffs point out, ERISA is a developing

1 and esoteric area of the law. It does
2 present many difficult issues of law and fact
3 made more complex, of course, in the context
4 of a class action such as this one. Although
5 plaintiffs survived defendants' motions to
6 dismiss, by and large, defendants would
7 likely have raised serious defenses at the
8 summary judgment phase as well as at trial,
9 if the case proceeded that far. Many of
10 these issues were legally and factually
11 complex issues that militate in favor of
12 settlement.

13 Also, of course, this case had yet
14 to be certified as a class action, and
15 plaintiffs and defendants, obviously,
16 recognize that courts have not
17 uniformly certified a proposed class to all
18 claims in ERISA cases of this nature.

19 Also, the risks of establishing
20 damages are always complex and generally
21 recognized in the context of these types of
22 actions. Very complex and require the
23 completion of full discovery and evaluation
24 of the relevant time period by the Court.

25 And there were questions as to

1 whether the losses alleged by plaintiffs
2 could be compensated under ERISA. There were
3 questions as to the proper measure of
4 damages. All of which, again, militated in
5 favor of settlement.

6 Had this case gone to trial, likely
7 there would have been a battle of experts.
8 Would be difficult for the parties to
9 anticipate the outcome or the decision that
10 would be made after hearing expert testimony
11 from both sides.

12 A third factor is the value of
13 immediate recovery. The Tenth Circuit has
14 held that the value of immediate recovery is
15 simply the monetary worth of the settlement.
16 This settlement is for \$9.25 million. And
17 the Court agrees that this amount may well
18 have been in excess of what the class may
19 have obtained even through trial. This
20 recovery is in addition to the payment the
21 plan will receive from the recovery garnered
22 in the securities litigation and
23 substantially increases the recovery for the
24 individual class members.

25 It is-- it is clear that continued

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1 litigation would have been protracted,
2 complex, and expensive; requiring more
3 discovery; requiring the battle over class
4 certification; requiring hiring and vetting
5 and discovery of experts; and ultimately, of
6 course, the expenses and time associated if
7 this case went all the way to trial.

8 And then the final factor the Court
9 must look at is the judgment of the parties
10 that the settlement is fair and reasonable.
11 And I've heard from both parties that after
12 -- as Ms. Katz said -- protracted mediation
13 and negotiation and intense negotiation
14 advocacy, they are satisfied that the
15 settlement is fair and reasonable to all.

16 Both parties are represented by
17 nationally-known counsel with extensive
18 experience in ERISA class actions. This has
19 been vetted by a third party. It's been
20 mediated. The Court is convinced that the
21 settlement is fair and reasonable. Thus, the
22 settlement will be approved at this hearing
23 on final approval of settlement.

24 And now we'll turn to the motion for
25 award of fees, expenses, and contribution of

1 compensation to class members.

2 MR. MELTZER: Thank you, Your Honor.
3 Your Honor, we put in an application
4 for award of attorneys' fees, reimbursement
5 of expenses and case contribution
6 compensation. Our request is for 30 percent
7 of the settlement fund. That amounts to
8 2.775 million, plus reimbursement of expenses
9 of \$76,715.59, and a \$1,000 award for each
10 named plaintiff for their contribution to
11 this case.

12 With respect to the request for
13 fees, there is a-- again, there's a test that
14 the Tenth Circuit employs to determine
15 whether-- whether the request is reasonable.
16 That-- that test is set out, among others, in
17 Brown v. Phillips Petroleum. This test is
18 quite a bit longer than the test relating to
19 approval of the settlement so I'll try and
20 run through the factors as quickly as I can.
21 There are, I believe, 10 or so that apply
22 here.

23 First is the time and labor
24 required. As the application states, Your
25 Honor, the class counsel has spent over 4,000

1 hours in prosecuting this case. It was a
2 case that was heavily litigated both on the
3 litigation side as well as on the mediation
4 settlement front.

5 The lodestar in the case is a little
6 bit over \$1.4 million. That translates into
7 a multiplier, a lodestar multiplier, of 1.88.
8 I would submit that that is a very modest
9 multiplier. In comparison, Your Honor, I
10 believe in the Westar securities case the
11 30 percent awarded by Your Honor. I believe
12 that amounted to something like a 3.9
13 multiplier. So here it is far, far less.

14 The second factor is the novelty and
15 difficulty of the questions presented by the
16 case. As we've stated in this hearing
17 before, ERISA is a difficult case-- ERISA is
18 a difficult statute to prosecute a case.
19 There are a lot of trapdoors in ERISA. The
20 legal questions that get presented in a case
21 like this are complex. They are novel and
22 they are developing. And unless you practice
23 in it, it is a very difficult area of the law
24 to navigate correctly.

25 The third factor is somewhat related

1 to that -- the skill requisite to perform the
2 legal service properly. Again, ERISA cases
3 are not easy. When you build in a class
4 action component to them, they go from
5 complicated to extremely complicated.

6 It is difficult to present the case
7 properly both in pleadings as well as in what
8 were essentially summary trials during all of
9 these mediations. Getting a damage analysis
10 that's credible and gives you a, you know,
11 hope for recovery is not easy. Navigating
12 the statute and the legal issues that are
13 compounded by difficult issues of fact,
14 again, is not an easy proposition.

15 The fourth factor, the preclusion of
16 other employment by the attorneys due to
17 acceptance of the case. As I stated
18 previously, we dedicated 4,000-- over 4,000
19 hours. That obviously has an opportunity
20 cost that prevents us or precludes us from
21 working on other matters during the two-plus
22 years or almost three years of litigation
23 that we dedicated here. I retract that.
24 Three-plus years of litigation here.

25 The-- whether the fee is fixed or

1 contingent is another factor. Here, there
2 was no guarantee that we would receive
3 payment for anything. I believe that is
4 particularly telling here because with Your
5 Honor's ruling on the motion to dismiss and
6 in a developing area of the law, there's no
7 certainty that you're going to overcome the
8 initial Rule 12 challenge. Did not come
9 until September of 2005, several years into
10 the litigation, after we had expended a lot
11 of time and a lot of money in prosecuting
12 these claims. So there was a great deal of
13 uncertainty, and there was certainly a fairly
14 large risk that we were going to get no
15 payment whatsoever.

16 The next factor is the amount
17 involved and the results obtained. Your
18 Honor, it's a settlement for \$9.25 million.
19 I believe it does substantially increase
20 recovery to the class members. It is in
21 addition to the recovery that the plan will
22 make as part of the Westar securities case.
23 I believe it is an excellent result. And I
24 believe that factor also supports the
25 requested fee.

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1 The next factor is the experience.
2 reputation, and ability of the attorneys. My
3 firm and-- my firm is an experienced--
4 Schiffrin & Barroway is an experienced class
5 action firm. Mr. Pope and his firm, Ralston,
6 Pope & Diehl, are very experienced
7 litigators, especially in this particular
8 court. We-- I'll leave the rest of it to the
9 papers so that I don't stand up and sort of
10 trumpet my success and abilities.

11 The next factor is the
12 undesirability of the case. Your Honor, it's
13 not a difficult leap to say that an ERISA
14 class action to many practitioners would be
15 viewed as undesirable. Sometimes my wife
16 feels the same way. The desirability is--
17 frankly, when cases are easy and not so
18 complex, they become a lot easier to jump
19 into and dedicate your time and resources to.
20 But where they are difficult and complex, as
21 here, it becomes a little more of a-- a
22 little more of a challenge. And, frankly, I
23 think that factor supports the requested fee
24 as well.

25 Awards in similar cases. When you

1 look at what the multiplier is in this case,
2 I think it compares extremely favorably to
3 both awards in the Tenth Circuit in class
4 action cases -- I think that's a very modest
5 multiplier, the 1.88 -- as well as cases
6 across the country. I think you'll see
7 multipliers that are closer to three, four,
8 and five for this type of case. So I think
9 the requested fee compares very favorably.

10 The final point, Your Honor, is we
11 have no objections to the award of the fees
12 to the class, as unanimously endorsed in our
13 application.

14 The second component is for
15 expenses. We have expended \$76,715.59. We
16 submitted an application to detail the
17 categories of expense. A lot of that is
18 discovery related. Much of-- some of that is
19 travel. It's travel related. There are also
20 copying expenses and the like. I think the
21 expenses, given the length of the case and
22 the complexity of the case, were minimal,
23 fortunately, because we were able to resolve
24 the case before we got further into expert
25 discovery. So resolving the case before we

1 went into really a deposition protocol and
2 before we started submitting summary judgment
3 papers helped keep expenses to a relative
4 minimum.

5 The final component of the
6 application is for case contribution awards.
7 We've asked for \$1,000 apiece. That is a low
8 amount relative to what awards have been in
9 other cases. But essentially it recognizes
10 that there are quite a few named plaintiffs.
11 In fact, more in this case than in almost any
12 other that I've seen. But the one thing I
13 will say for the named plaintiffs is they
14 were very active. They played a big role
15 They were a large part of us being able to
16 hold the line in settlement negotiations. I
17 think they did a really excellent job and
18 served the rest of the class very well.

19 THE COURT: All right. Thank you.

20 MR. MELTZER: If you have any
21 questions, I'll be happy to address them.

22 THE COURT: I don't.

23 Anyone else?

24 All right. The so-called Johnson
25 factors that have been-- come from a Fifth

1 Circuit case but have been adopted in the
2 Tenth Circuit are those as outlined by
3 Mr. Meltzer. In the Tenth Circuit the
4 percentage-of-recovery method has been
5 endorsed as an appropriate method for
6 determining an award of attorneys' fees in
7 these types of cases and in other types of
8 cases as well.

9 Based on the entire record, and
10 particularly 'the parties' pleadings
11 concerning these fees and expenses, I find
12 that the fees requested are reasonable. The
13 expenses are also reasonable and customary.
14 And the compensation requested for the
15 members, the named plaintiffs, is also
16 reasonable.

17 Many of these factors have already
18 been addressed in summarizing the propriety
19 of the settlement that was approved. But
20 I'll note further that there was extensive
21 time and labor involved in this case. Over
22 4,000 combined hours in prosecuting the case
23 that culminated in the settlement.

24 As already addressed, the questions
25 legally and factually were novel and

1 difficult and complex.

2 Class counsel is experienced, .
3 nationally recognized in this field, and had
4 the requisite skill necessary to perform the
5 legal services required in cases as complex
6 as this.

7 Based on the number of hours spent
8 over the last three-plus years, it's clear
9 that other employment was precluded to a
10 large degree by the attorneys that
11 represented the class.

12 The 30 percent request is in keeping
13 with the range of reasonable fee awards or
14 fee awards that have been found reasonable in
15 the Tenth Circuit. And the multiplication
16 factor as well.

17 The-- as I've already addressed, the
18 \$9.25 million settlement is very favorable to
19 the class. Given the complexity of the legal
20 and factual issues, the need for protracted
21 and intense advocacy, it's fair to say that
22 this case would have been viewed as
23 undesirable, perhaps, to many. And that
24 factor needs to be taken into account.

25 The nature and length of the

SHERRY A. BERNER
Official Court Reporter

1 professional relationship with the client is
2 evident, given the length of time that has
3 been spent to date on this case taking it
4 through settlement.

5 Again, the 33 percent-- or, rather,
6 the 30 percent requested is in line with the
7 range of awards in similar cases in this
8 circuit, including the range of awards given
9 by this particular Court.

10 As far as the expenses, we've
11 reviewed those. They appear to be reasonable
12 and customary expenses associated with
13 discovery and litigation and mediation.

14 And finally, with respect to the
15 request for \$1,000 each as a case
16 contribution award to each of the 27 named
17 plaintiffs, I'll find that that is also
18 reasonable and appropriate, given the
19 litigation support that they provided over
20 the last three-plus years to class counsel to
21 the benefit of all other members of the
22 class.

23 So the motion for award of
24 attorneys' fees, reimbursement of expenses
25 and case contribution compensation is

1 granted.

2 You all had, I think, presented a
3 proposed order. I think my law clerk talked
4 to you about some language that needed to be
5 changed. And as soon as you can get that-- I
6 suppose we could change that, if need be, and
7 we can get this order out right away.

8 I do commend all of you. I know
9 that you-- I know this was a difficult case
10 for everyone involved. And I had some sense
11 of that deciding the motion to dismiss, how
12 difficult many of these-- all of these issues
13 really were. So I do appreciate the obvious,
14 you know, commitment you all made to securing
15 a fair and reasonable settlement that, you
16 know, benefitted the members of the class and
17 benefitted the company. And I know it took a
18 lot of work and a lot of intense lawyering.
19 And you all, obviously, did a very excellent
20 job in all respects. So I commend you. And
21 it's nice to have lawyers such as yourselves
22 appear in this court. I look forward to
23 seeing you again someday in another complex
24 class action, no doubt.

25 MR. MELTZER: Thank you, Your Honor.

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THE COURT: All right. We'll be in
recess.
(THEREUPON, the hearing
concluded).

SHERRY A. BERNER
Official Court Reporter

1 UNITED STATES OF AMERICA)
 2 DISTRICT OF KANSAS) ss:

3
 4 C E R T I F I C A T E

5
 6 I, Sherry A. Berner, Certified Shorthand
 7 Reporter in and for the State of Kansas, do
 8 hereby certify that I was present at and
 9 reported in machine shorthand the proceedings
 10 had the 27th day of July, 2006, in the
 11 above-mentioned court; that the foregoing
 12 transcript is a true, correct, and complete
 13 transcript of the requested proceedings.

14 I further certify that I am not attorney
 15 for, nor employed by, nor related to any of
 16 the parties or attorneys in this action, nor
 17 financially interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set
 19 my hand and official seal at Topeka, Kansas,
 20 this 2ND day of AUGUST, 2006.

21
 22 Sherry A. Berner
 23 Sherry A. Berner
 24 Certified Shorthand Reporter
 25

SHERRY A. BERNER
 Official Court Reporter